



DATE: October 21, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager
Marlene Subhashini, Assistant City Manager

FROM: Sofia Mangalam, Community Development Director
Helen Gannon, Senior Planner

DEPARTMENT: Community Development

SUBJECT: CONSIDERATION OF AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION APPROVING A 770 SQUARE FEET ADDITION TO AN EXISTING SINGLE-STORY SINGLE FAMILY HOME INCLUDING CONSTRUCTING AN ADDITIONAL DRIVEWAY ON THE SITE AND MODIFYING THE EXISTING SHARED DRIVEWAY AND OTHER SITE IMPROVEMENTS LOCATED AT 106 CHALLENGE COURT IN NEIGHBORHOOD 1 – AR2023-0004

RECOMMENDATION

It is recommended that the City Council consider an appeal of a decision of the Planning Commission approving an Architectural Review Permit (AR2023-004) to construct a 770 square foot (SF) addition to the front and rear of an existing single-story single-family home located at 106 Challenge Court, including construction of an additional driveway on the site and modifying the existing shared driveway with 104 Challenge Court, and other site improvements; take testimony on the project application and conduct the appeal in accordance with the City's adopted procedures; deliberate, and by Minute Order, provide direction to staff on one of the following options:

1. Deny the Appeal and uphold/approve or modify the decision of the Planning Commission to approve an Architectural Review Permit AR2023-004 by Resolution No. P-19-24 and find that the project is exempt from the California

Environmental Quality Act (CEQA) under CEQA guidelines Section 15301 (Existing Facilities).

2. Grant the Appeal and overturn/disapprove or modify the decision of the Planning Commission to approve an Architectural Review Permit AR2023-004 by Resolution No. P-19-24 and find that the project is exempt from the CEQA under CEQA guidelines Section 15301 (Existing Facilities).

Based on the Council's direction, staff will return with an appropriate Resolution for adoption at a future meeting.

EXECUTIVE SUMMARY

On August 21, 2024, the City received an appeal from Nancy E Harmon and William H Borter, the owners of 104 Challenge Court ("Appellant"), regarding the decision of the Planning Commission approving Architectural Review Permit (AR2023-0004) to construct a total of 770 SF addition to the front and rear elevations of the single-story single-family residence located at 106 Challenge Court, including construction of an additional driveway on the site and modifying the existing shared driveway with 104 Challenge Court, addition of six new skylights, expansion of an existing covered patio in the rear, and finding that the project is exempt from review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301.

The Appellant, in their Appeal Memo (Attachment 1), lists two (2) specific items of appeal stating: 1) that eliminating over 80% of the portion of the shared driveway that exists on the property of 106 Challenge Court will cause significant parking, access, and circulation impacts to their property. Referring to the peer review done by Traffic Patterns, they also note that the templates used in the Applicant's traffic study were "incorrectly applied" and do not reflect current best practices; and 2) that the proposed new fence along the property line in the middle of the shared driveway was not shown on the plans and is intended to mislead the Planning Commission and the City Council regarding the severity of the potential for harm to them. Additionally, the Appellant lists four (4) bases for the appeal to support the two (2) specific items of appeal noted above.

The Planning Commission deliberated on the proposed project at three (3) public meetings. The Commission continued the item at the first meeting on September 7, 2023, to allow time for Kirti Patel, the homeowner of 106 Challenge Court ("Applicant"), to work with the owners of 104 Challenge Court towards a mutually agreeable project. The Commission then considered the project at the August 15, 2024, meeting and ultimately approved the Project and subsequently approved the resolution approving the project at the September 5, 2024, meeting. Meanwhile, staff received an appeal from the property owners of 104 Challenge Court on August 21, 2024. Staff then scheduled the appeal hearing for the October 21, 2024, City Council Meeting.

The three (3) Planning Commission meetings are described in further detail under the Background section.

BACKGROUND

The project is proposed on an 8,712-SF parcel located at 106 Challenge Court. The site is located on the southeastern side of Challenge Court. The existing one-story house was built in 1964 and features four (4) bedrooms and 1,784 sf of living space. The subject property is surrounded by other one-story single-family residences (Figure 1). Houses in the neighborhood predominantly consist of one-story houses and include a mix of Ranch Style and Eichler homes.



Figure 1: Vicinity Map

Source: Google Maps (August 2023)

Red – Applicant property; Blue – Appellant property

The existing house includes a side-facing garage with an existing front yard setback of 20 feet and a left side yard setback of approximately 7 feet. Both 106 and 104 Challenge Court currently have side-facing garage doors and utilize an 18-foot-wide shared driveway that straddles across both properties (Figure 2).

The property line runs in the middle of the shared driveway and provides vehicular access to both the garages of 104 and 106 Challenge Court. Shared driveways in Neighborhood 1 are rare, but not entirely uncommon. It should be noted that the Final Map for the subject property was recorded in 1963 when the subject lots were still within the unincorporated area of the County and does not show the two (2) lots, 104 and 106 Challenge Court, sharing a common driveway or any recorded easements.



Figure 2: Shared Driveway (Existing)
Source: Google Maps (June 2022)

History of the Architectural Review Permit

On January 24, 2023, staff received an application for an Architectural Review permit from the property owners of 106 Challenge Court. The proposed project includes an addition to an existing house and other site improvements identified in Foster City Municipal Code (FCMC) Sections 17.58.020(A)(1), (2) and (3) and therefore, required an administrative level Architectural Review Permit approval.

On February 16, 2023, an incompleteness letter outlining unfulfilled submittal requirements, including a request for a driveway operation study by a qualified engineer to verify that the driveway, with the proposed modifications, that will continue to serve 104 Challenge Court is adequate and up to standard, was sent to the Applicant.

On May 1, 2023, revised plans and supplemental materials were provided. The response letter noted that the “Driveway Study is in progress and will be submitted once ready.” Subsequently, a Driveway Study prepared by Kimley-Horn was submitted. However, the submitted analysis did not provide a conclusion or statement from the qualified consultant on whether the proposal would be consistent with the 25-foot turning radius for garages where the access does not directly face the street, as required by FCMC Section 17.04.020.

On May 12, 2023, City staff sent a second incompleteness letter sharing comments on the Driveway Study, shared comments from the Engineering Division, and encouraged the Applicant to continue to work with their neighbor.

On June 20, 2023, staff received an updated driveway study by Kimley-Horn. Due to the unique nature of the proposal, staff contracted with another firm, Traffic Patterns, to conduct a peer review of the Driveway Study by Kimley-Horn. On August 24, 2023, Traffic Patterns provided their conclusions and findings to staff. The Applicant and staff noted a

few issues in the peer review drawings regarding the location of the addition in relation to the side property line. The comments were passed on to Traffic Patterns, and they provided an updated report.

Staff determined the application to be complete when all revised plans and supplemental materials were resubmitted. Staff then scheduled the project for a Planning Commission Public Hearing on September 7, 2023. The complete set of plans is available in Attachment 2.

Due to the unique nature of the project, with the proposed modified shared driveway access, the Community Development Director determined that the project scope required review by the Planning Commission for final action pursuant to FCMC Section 17.58.040.C.2. In addition, staff did not bring forward any recommendation to the Planning Commission as there were no specific or clear development standards or code requirements applicable to shared private driveways.

PLANNING COMMISSION PUBLIC HEARING SEPTEMBER 7, 2023

On [September 7, 2023](#), staff presented the applicant's proposal to the Planning Commission. The Commission considered the request and all plans and supplemental information, including the Driveway Study (Attachment 4) prepared by Kimley Horn (the consultant) and the peer review prepared by Traffic Patterns (Attachment 5). Kimley Horn and Traffic Patterns were present at the meeting to answer questions. In the staff report, staff noted that pursuant to FCMC Section 17.58.050, the following findings must be made by the deciding body in order to approve or deny the Architectural Review application:

- A. That the proposal is consistent with the Foster City general plan and Title 17, Zoning, and Chapter 2.28, Planning, of the Foster City Municipal Code.*
- B. That the design of the proposal is appropriate to the city, the neighborhood and the lot in which it is proposed.*
- C. That the design of the proposal is compatible with its environment with respect to use, forms, materials, colors, setbacks, location, height, design, or similar qualities as specified in section 17.58.010.*

The Applicant for 106 Challenge Court shared his family's needs, including separate office spaces to work from home and their desire for a single-story addition, keeping in mind the privacy of their neighbors and the characteristics of an Eichler home. The Applicant noted that they had accommodated all changes in their final design per their neighbor's requests, and that there is no legal record of a shared driveway. He explained that Kimley-Horn prepared a Driveway Study using the two (2) largest minivans. The Applicant shared driveway layout examples from the surrounding neighborhood at the meeting, including 103 and 105 Challenge Court and 650 Matsonia Drive.

The Planning Commission primarily examined and asked questions regarding the potential impact of the proposed driveway modifications on the neighboring property at 104 Challenge Court due to the proposed 552 SF front addition. Questions were raised

about on-street parking loss due to the additional driveway and how driveway design would affect vehicle movement for 104 Challenge Court or emergency vehicles.

At the Meeting, Kimley-Horn presented the Driveway Study and demonstrated that a large minivan could access both garage stalls and surface stalls from a reverse entry standpoint in a single movement and that the same could be said for the garage stall and surface stall furthest from the street. Kimley-Horn further noted that the only movement that is challenged is parking in either the surface stall or garage stall that is closest to the street because it would require a 3-point turn. However, Kimley-Horn did conclude that continuing to access the parking stalls would be feasible with the added safety measure of either bollards or planters to protect the proposed addition. The Commissioners asked whether there were any changes in best practices for single-movement entry and exit from driveways and garages. The Kimley-Horn representative stated that 3-point turns are consistent with current engineering standards and noted that the peer reviewer report by Traffic Patterns reflected a difference in opinions.

Traffic Patterns, who peer-reviewed the Kimley-Horn Study on behalf of the city, mentioned that he was unaware of anything in the Bay Area that designs any new construction project where a movement cannot be conducted in a single movement. The peer reviewer believed that there is a significant impact on the homeowners at 104 Challenge Court due to the inability to get in and out of either of their parking spaces in a single movement.

The Applicant and Kimley-Horn emphasized that the Driveway Study was based on a worst-case scenario, utilizing larger cars than would typically be maneuvered in and out of parking stalls. The Commissioners also questioned if widening the driveway of 106 Challenge Court would lessen the impact, to which Kimley-Horn replied that it would not make a difference. The Appellant, at the time, expressed concerns about vehicular circulation and property value, emphasizing the need for a clearer visual representation of the project's impact.

One of the Commissioners emphasized the importance of objectivity, facts, and data. Most of the Planning Commission noted that they would not be able to make at least one (1) of the three (3) required findings (noted above) and asked the Applicant if they were willing to modify the project design.

The Applicant explained that many options were considered and discussed with their neighbors prior to the September 7, 2023, meeting and that their design options were limited due to property constraints. The neighbor requested that the Applicant install story poles and mesh so that they can simulate driving maneuvers and assess the feasibility of entering and exiting their garage parking stalls. Although the Applicant agreed to placing temporary barriers (story poles) up, based on the Appellant and Planning Commission's request, the Applicant ultimately did not fulfill the request.

At the conclusion of the meeting, the Commission continued the item to a date uncertain in order to allow the property owners to continue working towards a mutually agreeable

project by a vote of 3-1-0-1 (Noes: Venkat; Absent: Bronitsky). Refer to the Meeting Minutes in Attachment 7.

PLANNING COMMISSION HEARING AUGUST 15, 2024

On July 16, 2024, staff received an email from the Applicant indicating their intent to proceed with a hearing on the proposed project. Subsequently, on July 24, 2024, staff received a letter (Attachment 6) detailing all efforts made with the neighbors at 104 Challenge Court since the September 7, 2023, Planning Commission meeting. To staff's knowledge, both the homeowners of 106 and 104 Challenge Court were unable to find a mutually agreeable design, and the Applicant noted that the project scope remained unchanged since the previous meeting.

At the [August 15, 2024](#), Planning Commission meeting, staff presented the project proposal to the Commission for the second time. In the staff report, it was noted that since the September 7, 2023, meeting, the City Council had adopted Ordinance No. 672, which revised the required findings in FCMC 17.58.050. In order to approve or deny the Architectural Review application, the deciding body must make the following findings:

- A. That the proposal is consistent with the applicable provisions of the Foster City general plan and Title 17, Zoning, of the Foster City Municipal Code.*
- B. That the design of the proposal conforms to city's objective design and development standards and other adopted guidelines.*

The Applicant also gave a presentation, in which he emphasized all the efforts which had taken place since the previous meeting to reach some agreement with the property owners at 104 Challenge Court, including offering to pay for the expansion of the driveway at 104 Challenge Court. He stated that no mutual agreement was reached and that not being able to move forward with the project had begun to impact the quality of his family's life. The Applicant also showed photographs of other residences in Neighborhood 1 that utilize similarly configured driveways and photographs illustrating 104 Challenge Court occupying the 9 feet width portion of their driveway for storage of personal construction materials. These photos were shown to demonstrate that maneuvering in and out is possible with only access to one side of the existing driveway.

The Applicant indicated that there is an ongoing civil lawsuit with the property owners of 104 Challenge Court regarding their claims relating to the driveway, and no decision has been made regarding that case. The City Attorney confirmed that the ongoing civil lawsuit does not prevent the Planning Commission or the City from processing the application. The Applicant was asked if alternate design options were considered, and he stated that they explored all options, from a larger addition in the rear to expanding further in the front, even adding a second story, but that none of the alternate design options were viable for various reasons. One of the Commissioners recommended an alternative design option that they felt could be feasible, as a suggestion.

[27 public comments](#) were received prior to the meeting, and a total of five (5) speakers provided testimony at the public hearing, including the owners of 104 Challenge Court (Appellant). After the conclusion of the public comments, the Commissioners made the following comments during deliberations:

Commissioner Venkat noted that the owner of 104 Challenge Court expressed safety concerns at the first meeting, but at the last meeting, they mentioned buying a recreational vehicle (RV) one day. She asked if there were multiple concerns expressed and whether the reason for rejecting the proposal was due to safety and aging concerns, or if it was related to the purchase of an RV. She emphasized that the project should be approved since it meets the objective standards.

Commissioner Jagtiani stated that the project meets the two (2) required findings, and that the proposal is within the policies and regulations of Foster City. He noted that the applicant has gone above and beyond by offering to pay for 50% of the driveway improvements for their neighbors at 104 Challenge Court. He also appreciated that the Applicant showed the pros and cons of a hammerhead driveway versus a private driveway.

Commissioner Pedro appreciated the public involvement at the meeting. He agreed with his fellow Commissioners and stated that the project meets the City's criteria and the required findings.

Chair Haddad noted that the proposed addition is oversized for a location in front of the house and driveway and is causing an issue between the two (2) properties. He stated that he cannot approve a project that is not in compliance and is making an existing issue worse. He explained that there are other options and suggested flipping the design.

At the conclusion of the meeting, the Commission approved the project and directed staff to return with an appropriate resolution to approve AR2023-0004 at the next Planning Commission meeting by a vote of 3-1-0-1 (Noes: Haddad; Absent: Bronitsky). Refer to the Meeting Minutes in Attachment 8.

PLANNING COMMISSION HEARING SEPTEMBER 5, 2024

Based on the decision made at the August 15, 2024, Planning Commission meeting, staff returned with a Resolution of approval for AR2023-0004. On [September 5, 2024](#), the Planning Commission approved Resolution No. P-19-24 by a vote of 2-1-0-2 (Noes: Haddad; Absent: Bronitsky, Jagtiani).

ANALYSIS

The subject property is located in the R-1 Single-Family Residence zoning district and is subject to the City's adopted Municipal Codes, Citywide Policies, and [Architectural & Solar Guidelines](#). Staff evaluated the proposed design for compatibility with the

neighborhood, code requirements, and architecture of the existing house and others in the surrounding neighborhood, as well as with the FCMC zoning requirements.

GENERAL PLAN AND ZONING CONSISTENCY

[General Plan Land Use](#)

The Land Use Map of the General Plan designates the use of the subject site as “Single Family Residential.” The City’s General Plan states that up to 8 dwelling units per acre (du/ac) are allowed in this land use designation.

Staff comments: According to the General Plan, the subject site is designated for Single Family Residential, and the proposed first-story addition and remodel is consistent with the single-family use of the property.

[Foster City Municipal Code](#)

[Chapter 17.12 \(R-1 Single-Family Residence District\)](#)

The proposed project must comply with the standards of the R-1 zoning district related to setbacks, height, lot coverage, minimum lot size, minimum floor area, and all other relevant development standards. Table 1 identifies the applicable standards of the R-1 zoning district, including the property’s compliance with development standards as existing and proposed.

Table 1. R-1 District Development Standards

	CODE REQUIREMENTS	EXISTING	PROPOSED
Height*	Average 25’-0” max.	11’ – 8”	No change
Front Yard Setback	20’ Minimum	20’ – 0”	No change
Rear Yard Setback	20’ Minimum	44’ – 10”	36’ – 5”
Left Side Yard Setback	5’ Minimum	7’ – 1” (To Garage)	No change
Right Side Yard Setback	5’ Minimum	9’ – 11”	6’ – 5”
Lot** Coverage	50% max.	31.5%	40.8%

*Section 17.04.240, Definitions, Height of building, of the Foster City Municipal Code defines building height as the average height of a sloped roof.

**Coverage includes the land area covered by all buildings on a lot, including all projections except eaves.

Staff Comments: The proposed project is a 218 SF addition in the rear, a 552 SF addition to the front of the residence, addition of six (6) new skylights, an expansion of the existing covered patio in the rear, and the relocation of the driveway access for 106 Challenge Court. Upon review, staff determined that the proposed addition and remodel

are consistent with the applicable standards of the R-1 Zoning requirements (as shown in Table 1 above).

Proposed Addition - [Architectural and Solar Guidelines](#)

As noted earlier, the applicant is proposing a 218 SF addition in the rear, a 552 SF addition to the front of the residence, and an expansion of the existing covered patio in the rear, addition of six (6) new skylights and interior remodeling.

Staff reviewed the proposed addition for compliance with the requirements of Chapter 17.58 Architectural Control and Supervision of the Municipal Code and the City's Architectural and Solar Guidelines.

Proposed driveway addition and modifications to existing shared driveway

The properties at 106 Challenge Court and 104 Challenge Court currently share an 18-foot-wide driveway to access each of their garages. The proposed 552 SF front addition at 106 Challenge Court extends out to entirely cover the private driveway space in front of 106 Challenge Court's existing garage as well as a small portion of the 18-foot shared driveway space. Plans for 106 Challenge Court show the existing side facing garage that has access from the shared driveway being modified to a front (street) facing garage with access from a new driveway/curb cut.

The Foster City Municipal Code has the following provisions for garages and driveways:

- Section 17.04.230 Definitions, provides the definition of "garage" and states "***a turning radius of at least twenty-five feet shall be required for any garage where the access does not directly face the street.***"
- Section 17.50.030 Garage Entries includes "***Residential garage entrances opening on any front or side lot shall be located with the opening a minimum of twenty feet from the lot line unless in a planned development (PD) district and waived pursuant to Chapter 17.36.***"
- 17.62.050 Design standards, *Driveways providing access to garages, carports and parking areas serving three or less dwelling units shall be a minimum of ten feet in width for one-way traffic, and twenty feet for two-way traffic.*

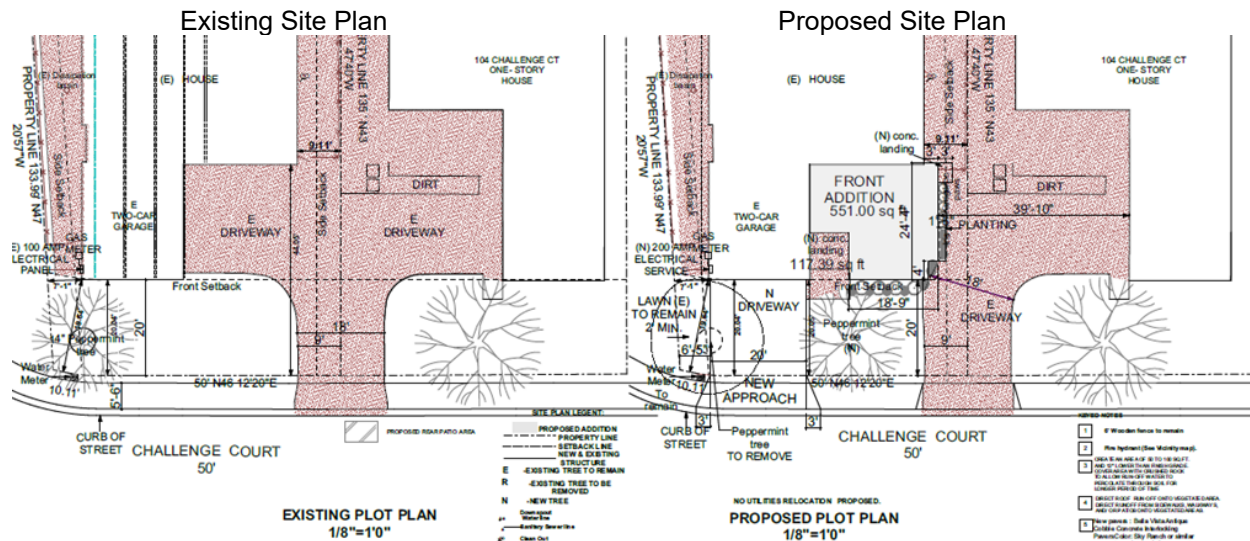


Figure 3: Existing & Proposed Site Plans
Source: Plans Submitted by Applicant, Sheet A1.1

As noted previously, there are no specific standards or code requirements applicable to shared driveways in the Foster City Municipal Code. Staff required the Applicant to submit a Driveway Study completed by a qualified engineer that verifies that the current shared driveway (after the modifications) that will continue to serve 104 Challenge Court is adequate and up to standard and that the property owners of 104 Challenge Court can continue to access their driveway with the proposed addition.

Driveway Study by Kimley-Horn (Attachment 4)

The Kimley-Horn Driveway Study, prepared on behalf of the Applicant, provided four (4) exhibits illustrating reverse entry and head-in entry into both garage parking stalls at 104 Challenge Court, as well as reverse departure and head-out departure from the parking spaces of 104 Challenge Court. The study demonstrates that 104 Challenge Court can continue to access its driveway with the proposed addition. It should also be noted that the illustration in these exhibits does not accurately reflect the proposed front addition, since the study was completed prior to the Applicant making changes to the project based on the Appellant's request. The Applicant's proposed plans illustrate a revision to eliminate the furthest most corner (closest to 104 Challenge Court) of the proposed front addition.

The analysis was completed based on a worst-case scenario, utilizing two (2) large minivans for the study. The turn movements were illustrated based on the assumption that the second minivan was parked on the driveway (surface) stall in front of the 104 Challenge Court garage at all times. In previous conversations with staff and at the September 7, 2023, Planning Commission meeting, Kimley-Horn indicated that a large van could access both garage stalls and surface stalls from a reverse entry standpoint in a single movement and that the same could be said for the garage stall and surface stall furthest from the street. In response to the Commission's question at the September 7,

2023, meeting, Kimley-Horn stated that 3-point turns are consistent with current engineering standards.

Peer Review by Traffic Patterns (Attachment 5)

Subsequently, staff had the Kimley-Horn Study, including the Exhibits, peer-reviewed by Traffic Patterns. Traffic Patterns stated that they are unaware of any examples in the Bay Area that designs a new construction project where a movement cannot be conducted in a single movement. They believed that there is a significant impact on the homeowners at 104 Challenge Court due to the inability to get in and out of either of their parking spaces in a single movement.

The peer reviewer stated that during site planning for parking operations, the engineering best practice is for a motorist to achieve entry and exit from a residential property as a single movement without the need for 2- or 3-point turns to reposition a vehicle in or from a rest location. Under the current shared driveway condition configuration for 106 Challenge Court and 104 Challenge Court, access into both private garages and on-site parking for each lot can be accommodated as a single-entry movement and single “back-out” movement as the movements are unimpeded. The peer review study states that the Kimley-Horn memo fails to note impacts to this existing single-access movement condition.

Traffic Patterns also noted that the Kimley-Horn vehicle turning templates are drawn in segments and do not represent continuous vehicle movements. The vehicle overhangs, if shown properly for all movements, would strike existing vegetation at 104 Challenge Court and would potentially impact proposed site improvements at 106 Challenge Court. The vehicle turning templates can be used to demonstrate parking and circulation, but do not accurately represent the full vehicle movements required for site entry and exit movements.

Staff comments: Refer to the Appeal Section of the Staff Report.

Review by the Public Works Department

The application was also routed to the Public Works Department for review, which indicated that the proposal would require an encroachment permit for the construction of the driveway and recommended bollards for added safety.

Findings Required

As part of the implementation of the Housing Element program H-D-6-a, FCMC Chapter 17.58 was amended on January 16, 2024, via [Ordinance No. 674](#). Based on the code amendments, the required findings applicable to the approval of an Architectural Review were amended. As discussed previously, at the time of the Planning Commission Public Hearing on September 7, 2023, the Planning Commission was unable to make one of the findings under the previous code as it relates to the proposal being appropriate to the neighborhood.

Based on the revised code, at the September 5, 2024, meeting, the Planning Commission was able to find:

- A. That the proposal is consistent with the applicable provisions of the Foster City general plan and Title [17](#), Zoning, of the Foster City Municipal Code.*
- B. That the design of the proposal conforms to city's objective design and development standards and other adopted guidelines.*

The Planning Commission approved the project via Resolution No. P-19-24 by a vote of 2-1-0-2 (Noes: Haddad; Absent: Bronitsky, Jagtiani). The findings were included in the approved Planning Commission Resolution P-19-24 (Attachment 3).

APPEAL

The Appeal (Attachment 1) lists various arguments in disagreement of the project and objects to the decision of the Planning Commission to approve the project. Staff has provided a summary of the arguments raised by the Appeal below followed by staff comments:

1) Eliminate well over 80% of the portion of the shared driveway that exists on the property of 106 Challenge Court, thus causing, in the words of the report from Traffic Patterns "significant parking, access, and circulation impacts to 104 Challenge Court." Additionally, Traffic Patterns finds that the templates used in the applicant's study were "incorrectly applied" and do not reflect current best practices. This is further detailed in the full report from Traffic Patterns, which is already on file.

Staff comments: The proposed project plans illustrate that the 18-foot driveway approach width will remain as is, while the area of the driveway directly in front of the 106 Challenge Court garage will be eliminated to accommodate the front addition. The existing side-facing garage at 106 Challenge Court has been modified to a front-facing garage with new driveway access. The proposed addition (front and rear) is entirely contained within the applicant's property. There are no recorded easements or other legal documents that outline the shared driveway access agreement or the use of the driveway area in front of the garages for both properties. Given that there were no specific standards or code requirements applicable to shared driveways in the Foster City Municipal Code and the fact that there were no legally recorded easements, staff required the applicant to submit a Driveway Study completed by a qualified engineer to confirm that the modified driveway will continue to serve 104 Challenge Court and is up to current engineering standards.

Based on the Applicant's Kimley-Horn Study, it appears that the property owners of 104 Challenge Court can enter and exit their garage/driveway (in a single- or 3-point turn) as long as their access to the proposed remaining shared driveway remains as is. As noted, the turning movements assume that while one vehicle accesses the driveway to park in the garage or the driveway (surface stall) in front of the garage, the second vehicle is parked in the remaining driveway (surface stall) in front of the garage. Staff thinks that it

is reasonable to assume that the driveway (surface stalls) in front of the existing garage at 106 Challenge Court can have one or two parked vehicles at all times. In other words, without a legally recorded easement, neither 106 nor 104 Challenge Court can assume that the driveway area (surface stalls) directly in front of their garage is available for unrestricted access by either property owners for turning/maneuverability purposes.

As noted earlier, the Traffic Patterns peer review (Attachment 5) states that “the proposed site improvements (as currently proposed) result in significant parking, access, and circulation impacts to 104 Challenge Ct.” and that “the vehicle turning templates applied to the existing driveway of the neighboring resident (104 Challenge Ct) to the project are incorrectly applied.”

Based on the proposed modifications and maintaining the driveway approach of 18 feet, it appears there may not be maneuverability challenges with single vehicle access and parking; however, there may be maneuverability challenges with two vehicles accessing and parking at the same time. However, staff would like to note that if the driveway area in front of 106 Challenge Court had two large vehicles parked in front of the garage, it would present the same challenges for 104 Challenge Court under the current site conditions.

Staff also consulted another traffic expert, and they noted that there is no engineering standard (single vs. 3-point turn) applicable to single-family driveway access as long as there is no obstruction to sight lines. The subject lots are interior lots (not corner lots or lots on an intersection) in a single-family neighborhood and currently, have no sight obstruction lines when heading in or backing out of the driveway.

However, staff would like to point out that should a fence or other type of barrier be proposed along the entire length of the property line in the future, it would significantly affect the ability of the neighbor to maneuver, access and park their two (2) vehicles at the same time.

While the peer review from Traffic Patterns notes that there will inevitably be a change to the way that the 104 Challenge property is accessed as a result of the project, the Planning Commission determined that the findings required for the Architectural Review Permit pursuant to FCMC 17.58.050(A) and (B) have been met because the project complies with the General Plan and Zoning Code requirements and the City’s objective design and development standards and other adopted guidelines.

2) The threatened but so far unshown and ill-defined new fence along the property line in the middle of the shared driveway. We contend that not yet showing the new fence on the plans is calculated to mislead the Planning Commission and the City Council regarding the severity of the potential for harm to the owners of 104 Challenge Court.

Staff comments: The proposed project plans considered by the Planning Commission did not illustrate a proposed fence and thus was not reviewed by staff or the Planning

Commission. However, it shall be noted that fences in the front yard and/or side yard are subject to the fence regulations outlined in FCMC Chapter 17.52, Fences, Hedges and Walls and are subject to height and certain materials requirements.

BASES FOR APPEAL

3) The applicant has served us with a lawsuit regarding both our property rights and that lawsuit has not been decided. To proceed with their project at this time could result in the need to deconstruct the entire portion of the addition that would replace their portion of the shared driveway.

Staff Comments: The civil lawsuit is between the two (2) property owners. The City of Foster City is not involved in the civil lawsuit and has not received any orders from the relevant court to state the City's consideration of the Architectural Review of the project. As such, the City is obligated to consider the application and approve or deny the Architectural Review request, based on the City's adopted General Plan, Municipal Code and other documents.

4) As is shown on countless photographs submitted by the applicant, this shared driveway is currently significantly smaller than other driveways in the neighborhood and if the project and new fence are allowed, 104 will have a completely substandard driveway as a result - far smaller than legally allowed. At it's current 18', it is already nonconforming. The applicant is proposing, after all is said and done, in our being left with merely a 9' wide driveway.

Staff Comments: The Appellant is referring to the photographs submitted by the Applicant as part of their memo at the August 15, 2024, meeting, which were added as an attachment to the packet. The photographs were titled "Single Family homes in neighborhood with curved driveway" ([August 15, 2024, attachment](#)).

It shall be noted that the photographs submitted by the project Applicant illustrate that the total distance between the garage eave and side property line at both 103 and 105 Challenge Court is 28 feet each. The photos also illustrate that the total distance between the garage eave and the side property line at 104 Challenge Court is similarly 28 feet. The document proceeds to provide five (5) other examples of the property line to garage eave measurements of various homes within Neighborhood 1 where the garage door does not face the public right of way. These measurements range from 23 feet to 28 feet in total distance. Please note that these photographs do not illustrate the measurements of the driveway approach.

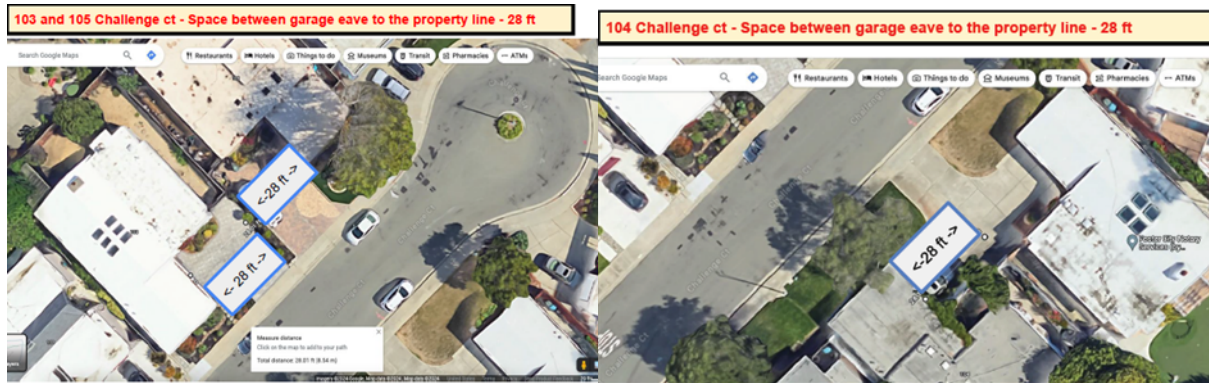


Figure 4: Space between garage eaves to property lines
Source: Attachment 6 of the August 15, 2024, Planning Commission packet

Pursuant to Section 17.62.050.B.3, driveways providing access to garages shall be a minimum of ten feet in width for one-way traffic, and twenty feet wide for two-way traffic. The Appellant is stating that the existing driveway (currently at 18 feet) being utilized at 104 and 106 Challenge Court is already existing non-conforming. However, there are no records or evidence to show that this shared driveway was meant to serve two-way traffic i.e., serving as an entry and exit at the same time. See images below for staff rendering of proposed addition. Given that these lots were developed under the County, an 18-foot driveway width for shared driveways (“driveway throat width”) may have been an acceptable standard at the time. There are no specific objective design or development standards or code requirements applicable to shared private driveways.



Figure 5: Existing vs. Proposed Front Elevation Rendering
Source: Google Maps/Staff

Additionally, the proposed project considered by the Planning Commission, and illustrated on the plans, show that the private driveway in front of 106 Challenge Court will be occupied by the proposed front addition and the existing shared 18-foot-wide driveway approach along both property lines, up to 20 feet from the front property line (see below), will be maintained.

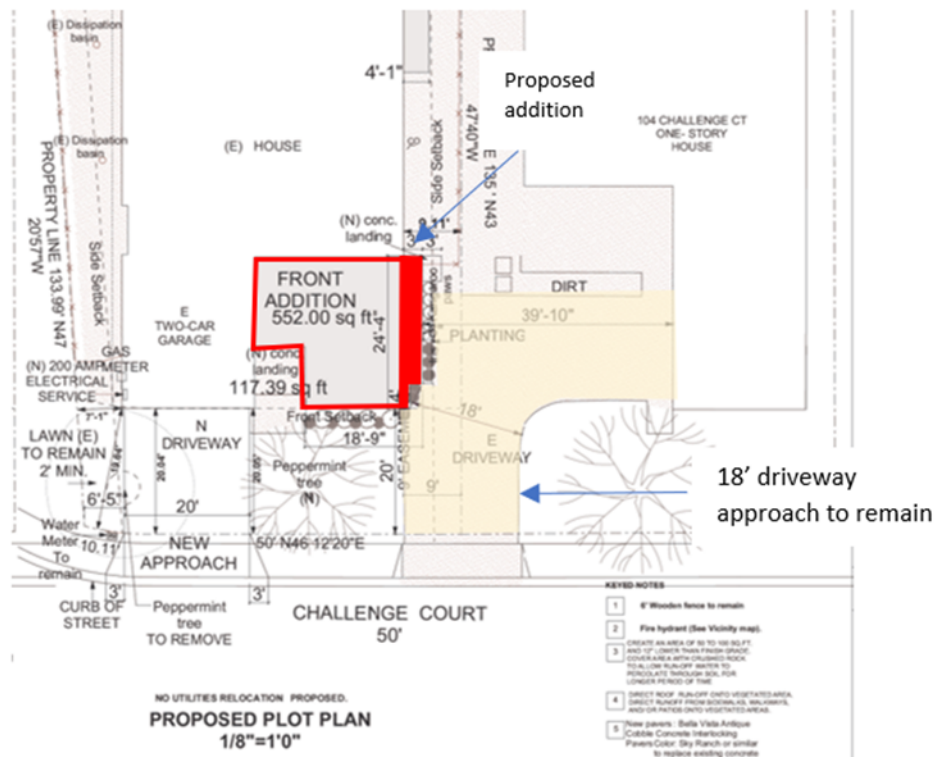


Figure 6: Proposed Site Plan showing 18' driveway approach and proposed front addition
Source: Plans Submitted by Applicant, Sheet A1.1

The Appellant is stating that the width of the driveway for 104 Challenge would be reduced to 9 feet “when all is said and done”. As noted above, based on the submitted plans for the Project, and a subsequent revision to eliminate the furthest most corner of the proposed front addition, the driveway would maintain the existing width of 18 feet and there was no consideration of the “new fence” referenced in the Appellant letter because the proposed project plans, did not include a fence.

5) The applicant has repeatedly asserted that they have "considered" many other options for their design, but has not been required to provide detail of them or why they would select the one that ensures ongoing harm in the most extreme way. It is apparent from studying the architectural drawings that there are multiple options for allowing the full 770 square foot addition without eliminating the shared portion of the driveway. We have suggested several options including expanding the entire side of the house to the legal limit rather than just the very front and rearmost sections, using more of the rear yard rather than loading so much into the driveway area, putting the new offices above the current structure, and on 8/15, Commissioner Haddad had another excellent idea regarding flipping the current design. This being one of the largest lots in Foster City, there is no doubt of there being options where neither party is harmed and the applicant achieves their full 770 square foot addition.

Staff Comments: Staff reviews entitlement applications, including plans which are submitted directly to the Community Development Department. While staff did have communications with the Applicant regarding alternate design options, in an effort to understand if other options were explored, the submitted plans (Attachment 2) are what was officially submitted by the Applicant. It is also important to note that neither staff nor the Planning Commission can design for a homeowner. Staff and the Commission can only review/comment on the submitted plans. While they can encourage alternate design options, ultimately, it is up to the homeowner to decide their final design. As such, staff reviewed the submitted plans on file for compliance with the City's adopted Municipal Codes and other policies, to ensure that the proposed addition meets the required setbacks, coverage, and height of the underlying zoning district.

6) On 8/15, the applicant showed a photo of our contractor's truck and a pile of dirt on our side of the shared driveway and stated that the truck was parked like that "every day for nearly a year", implying if they could get in and out of their garage, we should be able to do likewise. The only time a pile of dirt was in that position for a 2-3 day project long after the extended back yard project. I just learned from our contractor that the applicant asked him to move the truck because his wife couldn't get into and out of their garage with it in that position. The garage at 106 Challenge Court does not have the center post restricting access that the garage at 104 Challenge has, which further impacts accessibility. Regardless, one of the owners of 106 Challenge Court needed the full width of the driveway to access the garage compelling the conclusion that it is a shared driveway, intended for the mutual benefit of both properties and thus, a less impactful design of the addition should have been required.

Staff Comments: Multiple photographs were shown at the August 15, 2024, Planning Commission meeting. Staff has included these photographs below for reference (Figure 7). The photograph being referenced within the Appeal Memo and shown by the Applicant at the August 15, 2024, meeting illustrated a pile of dirt, a black (four-door) pickup truck, construction materials, and a long piece of plywood within the 9' driveway space on 104 Challenge Court's property (Figure 7, left photograph). The property owners of 106 Challenge Court explained that they were unable to use the portion of the driveway on 104 Challenge Court's property for nearly one year and emphasized that they could still maneuver in and out of their garage at 106 Challenge Court with ease. As such, they believe that the homeowners of 104 Challenge Court will be able to do the same with only access to their side of the driveway.

Note that Staff is unable to verify or confirm the information stated during the meeting or in the Appeal memo. Regarding the center post within the garage space of 104 Challenge Court, staff did not review the floor plan of the neighbor's garage as part of the proposed addition at 106 Challenge Court.



Figure 7: Photograph shown at the August 15, 2024 Meeting
Source: Applicant's Presentation

STANDARD OF REVIEW ON APPEAL

The Planning Commission determined that the findings required for the Architectural Review Permit pursuant to FCMC 17.58.050(A) and (B) have been met because the project complies with the General Plan and Zoning Code requirements and the City's objective design and development standards and other adopted guidelines. As noted earlier, there are no specific objective design or development standards or code requirements applicable to shared private driveways.

Pursuant to FCMC section 17.58.040(F) and 17.06.150(B)(2), the City Council must review the written findings of the Planning Commission and consider the written and oral argument of the appellant to make a determination on whether the appeal should be upheld or denied. New matter may not be introduced by either party to such an appeal.

California Environmental Quality Act

The California Environmental Quality Act (CEQA), includes a list of classes of projects which have been determined not to have a significant effect on the environment, and therefore, are exempt from the provisions of CEQA. The project would be for the relocation of a driveway, installation of six new skylights, expansion of an existing covered patio in the rear, and the expansion of an existing single-family home. The site would continue to be a single-family home and therefore, the proposed project would be exempt under CEQA Guidelines Section 15301.

FISCAL IMPACT

The appeals are subject to "Actual Cost* Subject to a minimum \$500 Deposit at time of filing". Any staff time spent on the appeal will be paid through the deposit.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – Appeal Basis Memo

Attachment 2 – Project Plans, Received August 15, 2023

Attachment 3 – Resolution P-19-24

Attachment 4 – Driveway Study (Kimley Horn)

Attachment 5 – Driveway Study Peer Review (Traffic Patterns)

Attachment 6 – Project Reinitiation Memo

Attachment 7 – September 7, 2023, Planning Commission Meeting Minutes

Attachment 8 – August 15, 2024, Planning Commission Meeting Minutes